MOTION FILED

JUN 7 1976

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

75-1687 No. [redacted]

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee for The Port Authority of New York and New Jersey Consolidated Bonds, Fortieth and Forty-First Series, on its own behalf and on behalf of all holders of Consolidated Bonds of The Port Authority of New York and New Jersey and all others similarly situated,

Appellant,

v.

THE STATE OF NEW JERSEY, BRENDAN T. BYRNE, Governor of the State of New Jersey, and WILLIAM F. HYLAND, Attorney General of the State of New Jersey,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE*

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June 4, 1976

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

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ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Securities Industry Association through its Public Finance Council hereby respectfully moves for leave to file the accompanying *amicus curiae* brief in the above-described action in support of the jurisdictional statement filed by appellant, United States Trust Company of New York. The consent of counsel for the appellant has been

obtained. The consent of counsel for the appellees was requested but refused.

The interest of the Public Finance Council of the Securities Industry Association in this case arises from the fact that its members will be directly and substantially affected by the ultimate outcome of this litigation, as they have been already affected by the repeal of the 1962 Covenant and by the decision rendered in this case by the Superior Court of the State of New Jersey and affirmed by the Supreme Court of the State of New Jersey.

The Securities Industry Association is a trade association representing the leading firms and organizations whose business is the raising and allocation of capital moneys. Its members constitute a broad cross-section of the securities industry—investment bankers, brokers, dealers, underwriters, bond departments of banks, among others. The Public Finance Council of the Association has a vast wealth of collective experience in, familiarity with, and expertise with respect to the securities markets for obligations of state and local governments, a unique market.

The Public Finance Council is confident that appellant will adequately present the importance to Port Authority bondholders of this Court's decision on the constitutionality of repeal of the 1962 Covenant. However, the Public Finance Council is singularly able to present facts concerning the impact of the decision on the constitutionality of the repeal on the municipal bond market generally, on the borrowing ability of state and local governments which Council members represent as investment bankers, and on the general investing public. The Council respectfully submits that the general importance of the questions presented to this Court requires that such facts be presented by the Council as *amicus curiae*.

Although appellant's jurisdictional statement was served on May 21, 1976, the Public Finance Council did not learn until June 2nd that appellees intended to file a motion to dismiss the appeal herein. The Council has been advised that appellees have agreed to serve and file their motion to dismiss the appeal on Monday, June 7th, and that appellant has agreed to serve and file its response thereto within three or four days thereafter, so that this Court may consider the matter this Term. The Public Finance Council is serving and filing the within motion and brief on Monday, June 7th. Since the accompanying brief restricts itself to describing the importance of this appeal to the persons and entities enumerated above the Council respectfully submits that appellees should be able to file their objections to the within motion, if they so desire, within three or four days so that distribution and consideration of the jurisdictional statement and motion to dismiss will not be delayed.

June 4, 1976

Respectfully submitted,

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

BRIEF OF *AMICUS CURIAE*

The Securities Industry Association, through its Public Finance Council, respectfully submits this brief in support of the jurisdictional statement filed herein by appellant United States Trust Company of New York. This brief will not address itself to the legal issues considered in the jurisdictional statement, nor will it analyze the lower

court's decision. Rather, this brief will deal solely with the general importance of this case to the investing public and the members of the securities industry involved in the municipal bond market.

Interest of *Amicus Curiae*

The Securities Industry Association is a trade association representing the leading firms and organizations involved in the raising and allocation of capital moneys. The Association, through it Public Finance Council, is comprised of investment bankers, brokers, dealers, underwriters, and bond departments of banks, among others, who participate in the financing of tax-exempt obligations of states and local governments.

The decision on the constitutionality of the repeal of the 1962 covenant will have a direct and substantial impact on the general investing public and, perforce, on the securities industry generally.

Argument

The financing of tax exempt obligations includes the financing of obligations of states, cities, public authorities and other local governmental districts. In the past five years such issuers have issued from $23 billion to $29 billion of long-term debt in each year. Such financing encompasses a wide range of public purposes ranging from toll roads, bridges and airports to schools, fire engines and other essential governmental needs. The size of issues ranges from $10,000 to $1 billion. Although the market is diverse, it is based upon the reliance of prospective purchasers on the security offered by the issuers. Assurance of payment and continuation of the inviolability of the security for such payment are essential to a proper func-

tioning of the market. In turn, the continuation of an effective operation of state and local governments is dependent upon such issuers' access to capital moneys. Such access is dependent upon the continued integrity of the security and source of payment of such obligations, as well as the integrity of the pledges and contractual undertakings of the issuers made in connection with the issuance and sale of their obligations.

Over the years investment bankers and investors alike have believed that the legal strengths of state and local government financing have been properly based on (1) the rule that the statutes under which bonds are issued are an integral part of the bond contract and (2) the provision in Article I Section 10 of the Constitution of the United States that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ." The repeal of the 1962 Covenant has constituted a challenge to the propriety of both of these beliefs, and thus constitutes a threat to the very foundations of municipal credit generally.

The 1962 Covenant was embodied in concurrent statutes adopted by the New Jersey and New York legislatures authorizing construction by the Port Authority of New York and New Jersey ("Port Authority") of the World Trade Center and providing for the take over of the Hudson-Manhattan Tubes, now PATH. Section 6 in each of the statutes includes the following: "The 2 States covenant and agree with each other and with the holders of any affected bonds . . ." that no pledged revenues shall be applied ". . . for any railroad purposes whatsoever other than permitted purposes. . . ." This covenant served to maintain the strong credit standing and the borrowing power of the Port Authority, by reassuring investors that assumption of PATH and its inevitable deficit did not con-

stitute a precedent for other similar perpetual deficit projects. The solemn promises included in this covenant were relied upon by underwriters and investors in the purchase and sale of $1.2 billion bonds following its enactment.

For the entire investment community this covenant epitomized the security—an inviolate contract—essential to persuade investors that the bonds to be purchased were based on sound credit standards. The continuing integrity of such covenants is essential so that state and municipal governments may market their bonds successfully. The repeal of the 1962 Covenant was destructive of investor confidence and has had a severe impact on public credit. Accordingly, the ability of states and municipal governments to finance capital projects at reasonable rates is inextricably involved in this controversy. The controversy is not limited to the Port Authority or the two states involved, but involves the entire country. Final and decisive action by the United States Supreme Court is necessary to reassure the investing public that the hundreds of billions of dollars invested in state and local obligations are indeed protected by the impairment clause of the Federal Constitution.

Conclusion

The decision rendered by the Superior Court of the State of New Jersey which was affirmed by the Supreme Court of the State of New Jersey has already had an adverse effect upon the ability of states and local governments to raise necessary capital to meet their capital requirements. For this reason it is necessary that this Court note jurisdiction in this matter for final determination of the issues raised in

the courts below, and decide the issues so that the investment community may be able to properly evaluate the enforceability of the pledges and contractual undertakings contained in obligations of state and local governments.

Respectfully submitted,

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